

**UNITED STATES DISTRICT COURT
DISTRICT OF OREGON**

UNITED STATES OF AMERICA,

6:95-cr-60091-MC

v.

**STIPULATION AND ORDER TO
AMEND PREVIOUSLY-ENTERED
JUDGMENT**

ROBERT EDWARD MENKE,

Defendant.

This matter is before the Court on defendant's motion to vacate or correct his sentence pursuant to 28 U.S.C. § 2255. Based on the Supreme Court's decisions in *Johnson v. United States*, 135 S. Ct. 2551 (2015), and *Welch v. United States*, 136 S. Ct. 1257 (2016), and the Ninth Circuit's decision in *United States v. Cisneros*, No. 13-30066, ___ F.3d ___, 2016 WL3435389 (9th Cir. June 22, 2016), and having considered the factors under 18 U.S.C. § 3553(a) and the interests of justice, the parties agree that the judgment in this case should be amended to:

(1) delete references to the Armed Career Criminal Act and 18 U.S.C. § 924(e), and limit the description of defendant's conviction to felon in possession of a firearm in violation of 18 U.S.C. § 922(g);

(2) reduce the term of imprisonment from 300 months to 120 months; and

(3) reduce the term of supervised release from five years to three years.

The parties further agree that all other aspects of the original judgment and commitment order, including the conditions of supervised release, should remain the same.

The parties believe defendant will be due for release upon entry of the amended judgment. The defendant has a re-entry plan in place that has been reviewed and approved by the United States Probation Office.

The defendant has consulted with counsel and agreed to waive his right to a re-sentencing hearing and allocution, and any right he may have to be present for the amendment of his sentence, and stipulates to the provisions above.

Based on the above, and the Court concurring,

IT IS HEREBY ORDERED that an amended judgment and commitment order shall be prepared and entered in accordance with the stipulation of the parties, deleting references to the Armed Career Criminal Act and 18 U.S.C. § 924(e), and limiting the description of defendant's conviction to felon in possession of a firearm under 18 U.S.C. § 922(g); deleting the previously-imposed term of 300 months' imprisonment, and replacing it with a sentence of 120 months' imprisonment; and substituting a three-year term of supervised release for the five-year term previously imposed. All other aspects of the judgment and commitment order previously entered in this case, including the conditions of supervised release, shall remain in full force and effect.

IT IS FURTHER ORDERED, inasmuch as defendant has already served more than 120 months in custody for this offense and has a re-entry plan in place that has been reviewed and approved by the United States Probation Office, that defendant be released upon entry of this order.

Dated this 18th day of August, 2016.

/s/ Michael McShane
HONORABLE MICHAEL J. McSHANE
United States District Court Judge

Presented upon agreement of the parties by:

s/ Stephen R. Sady
STEPHEN R. SADY
Chief Deputy Federal Public Defender
Counsel for Defendant

BILLY J. WILLIAMS
United States Attorney

s/ Frank R. Papagni, Jr.
FRANK R. PAPAGNI, JR.
Assistant United States Attorney